

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JAMES C. WOODS
Claimant

VS.

CERTAINTEED CORPORATION
Respondent
Self-Insured

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Docket No. 1,022,453

ORDER

Respondent appeals the December 21, 2005 Preliminary Decision of Administrative Law Judge Robert H. Foerschler. Claimant was granted benefits for an injury to his right knee after the Administrative Law Judge (ALJ) determined that the injury suffered by claimant as the result of a fall on August 15, 2005, was a natural consequence of the original injury suffered by claimant to his left knee on November 5, 2004. Respondent argues that the August 2005 fall, which occurred while claimant was on vacation, resulted in a new and separate injury, not related to his employment.

ISSUES

1. Did claimant suffer accidental injury arising out of and in the course of his employment?
2. Did claimant's intervening injury to his right knee suffered while he was on vacation in Champaign, Illinois, constitute a separate non-compensable accident or is it a natural consequence of the work-related injury suffered by claimant to his left knee on November 5, 2004?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant originally suffered accidental injury to his left knee while walking on stairs at work when his foot caught on one of the treads, causing him to fall forward. This injury, which occurred on November 5, 2004, was recognized as compensable by respondent and appropriate treatment was provided with orthopedic surgeon Leslie D. Thomas, M.D., involving surgical repair of a quadriceps tendon rupture. Claimant was released from Dr. Thomas's care on April 12, 2005.

Approximately four months later, while on vacation, claimant suffered injury to his right knee when his previously injured left knee gave way. Claimant has since had surgery on his right knee for a right knee quadriceps tendon tear and a right knee lateral meniscus tear. This surgery was performed on September 2, 2005, under the hand of John N. Vani, M.D., at the Providence Medical Center.

Claimant's history is also significant in that in a July 1, 2005 medical evaluation performed by P. Brent Koprivica, M.D., Dr. Koprivica documented claimant's difficulties not only with his left knee, which had ongoing residual weakness and subjective instability (which in Dr. Koprivica's opinion led to an altered gait), but also the fact that as a direct and natural consequence of claimant's protective behaviors of the left lower extremity, he had developed mechanical back and right lower extremity pain and difficulties. Dr. Koprivica's report did indicate that claimant's ongoing weakness of the left leg resulted in occasional buckling of the knee and, as noted above, the abnormal gait leading to right leg and low back pain.

Claimant testified at the preliminary hearing and at his discovery deposition that it was this weakness and the ongoing difficulties with the left knee which led to the buckling of the left knee, causing him to fall into a window well, resulting in the significant right knee injury.

In workers compensation litigation, it is the claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.¹

Every natural consequence of a compensable injury is also compensable, even a new and distinct injury, if it is the direct and natural result of the original compensable injury.² However, a subsequent reinjury of a compensable injury is not compensable if a results from a new and separate accident.³

The Appeals Board (Board) must determine whether claimant's injury is the result of a new and separate accident or, in the alternative, a direct and natural result of the original compensable injury suffered to claimant's left knee on November 5, 2004.

The Board has addressed this issue on more than one occasion. In *Burbank*,⁴ the Board was asked to consider whether the claimant, who fractured her left hip when she fell

¹ K.S.A. 44-501 and K.S.A. 2004 Supp. 44-508(g).

² *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

³ *Stockman v. Goodyear Tire & Rubber Co.*, 211 Kan. 260, 505 P. 2d 697 (1973).

⁴ *Burbank v. Unified School District 259*, No. 223,983, 1997 WL 802913 (Kan. WCAB Dec. 19, 1997); see also *Logsdon v. Boeing Co.*, ___ Kan. App. 2d ___, 128 P.3d 430 (2006).

at work in 1996, suffered a new injury or a natural consequence of that original injury when, in June of 1997, she fell while getting out of her son's truck at home, suffering a compression fracture at L-1 and suffering several fractured ribs. The Board, in its detailed analysis dealing with new injuries versus direct and natural results of the primary injury, determined that the claimant's 1997 injury was a direct and natural result of the 1996 compensable injury. In this instance, the Board finds the analysis to be similar to that in *Burbank*. The Board finds that claimant's right knee injury stemming from the August 15, 2005 fall while on vacation was a natural consequence of the November 5, 2004 left knee injury suffered while employed with respondent. The Board, therefore, finds that the award by the ALJ of workers compensation benefits for claimant's injury to his right knee on August 15, 2005, should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Decision of Administrative Law Judge Robert H. Foerschler dated December 21, 2005, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March, 2006.

BOARD MEMBER

c: Timothy M. Alvarez, Attorney for Claimant
Mark E. Kolich, Attorney for Respondent
Robert H. Foerschler, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director